

Transportation/Public Works

Final Agenda

Louisville Metro Council

Meeting Date: 03/14/2006

Meeting Time: 4:00 PM

Location: Third Floor, City Hall

Chairs: Tom Owen (8)

Members: Tom Owen (8)
Vicki Welch (13)
Robert Henderson (14)
George Melton (15)
Hal Heiner (19)
Stuart Benson (20)
Robin Engel (22)

Special Items for Discussion:

- 1 [R-32-03-06](#) A RESOLUTION SUPPORTING THE FOLLOWING PROJECTS AND AUTHORIZING THE MAYOR TO APPLY FOR AND ENTER INTO AGREEMENTS WITH THE COMMONWEALTH OF KENTUCKY TRANSPORTATION CABINET DEPARTMENT OF HIGHWAYS CONCERNING THE PRESTON HIGHWAY CORRIDOR RAIL BRIDGE SCENIC BEAUTIFICATION, 18TH STREET CORRIDOR MULTI-MODAL ENHANCEMENT, K & I RAILROAD BRIDGE AND BICYCLE PRIORITY CORRIDOR IMPROVEMENT.
[Sponsor\(s\)](#) [Transportation/Public Works](#)
- 2 [R-33-03-06](#) A RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A TRANSPORTATION ENHANCEMENT GRANT FROM THE KENTUCKY TRANSPORTATION CABINET IN THE AMOUNT OF APPROXIMATELY \$300,000.00 TO BE USED BY PLANNING AND DESIGN SERVICES FOR THE BEARGRASS CREEK TRAIL.

[Sponsor\(s\)](#) [Transportation/Public Works](#)

- 3 [O-49-03-06](#) AN ORDINANCE GRANTING A TELECOMMUNICATIONS SERVICES FRANCHISE TO WITEL COMMUNICATIONS, LLC PURSUANT TO SECTION 116.70 ET SEQ. OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES [LMCO]; AND TERMINATING PREVIOUS LICENSE AGREEMENTS ENTERED INTO WITH THE FORMER CITY OF LOUISVILLE, AND WITH JEFFERSON COUNTY, KENTUCKY.

[Sponsor\(s\)](#) [Transportation/Public Works](#)

- 4 [O-1-01-06](#) AN ORDINANCE CREATING A NEW CHAPTER, 164, WITHIN LOUISVILLE METRO CODE OF ORDINANCES (LMCO) TITLE XV, TO BE TITLED "SYSTEM DEVELOPMENT CHARGES FOR ROADWAYS." (AS AMENDED) (TABLED)

[Sponsor\(s\)](#) [Transportation/Public Works](#)

- 5 [R-246-11-05](#) A RESOLUTION URGING THE KENTUCKY PUBLIC SERVICE COMMISSION TO RE-EVALUATE LOUISVILLE GAS AND ELECTRIC COMPANY'S (LG&E) REQUEST FOR A NATURAL GAS RATE INCREASE, AND DECLARING THE ENACTMENT OF THIS RESOLUTION AN EMERGENCY. (Tabled)

[Sponsor\(s\)](#) [Transportation/Public Works](#)

- 6 [R-247-11-05](#) A RESOLUTION RENAMING THE SOUTH LOUISVILLE GOVERNMENT CENTER BUILDING IN HONOR OF WILLIAM H. "BILL" WILSON. (tabled)

[Sponsor\(s\)](#) [Transportation/Public Works](#)

RESOLUTION NO. _____, SERIES 2006

A RESOLUTION SUPPORTING THE FOLLOWING PROJECTS AND AUTHORIZING THE MAYOR TO APPLY FOR AND ENTER INTO AGREEMENTS WITH THE COMMONWEALTH OF KENTUCKY TRANSPORTATION CABINET DEPARTMENT OF HIGHWAYS CONCERNING THE PRESTON HIGHWAY CORRIDOR RAIL BRIDGE SCENIC BEAUTIFICATION, 18TH STREET CORRIDOR MULTI-MODAL ENHANCEMENT, K & I RAILROAD BRIDGE AND BICYCLE PRIORITY CORRIDOR IMPROVEMENT.

Sponsored By: Councilman Tom Owen

WHEREAS, the Metro Government desires to apply for and receive state grants for the following projects;

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: That the Mayor is hereby authorized to apply for and enter into Agreements with the Commonwealth of Kentucky Transportation Cabinet Department of Highways for the following projects:

- Preston Highway Corridor Rail Bridge Scenic Beautification for the design and implementation of improvements that will enhance the corridor including a railroad overpass.
- 18th Street Corridor Multi-modal Enhancement for multi-modal and streetscape improvements for the 18th Street corridor between Broadway and Algonquin Parkway.
- K & I Railroad Bridge for the construction of bicycling and pedestrian facilities on the K & I Railroad Bridge to connect Louisville with southern Indiana communities.

- Bicycle Priority Corridor Improvement for improvements for bicycling on River Road, Taylorsville Road and New Cut Road.

SECTION II: This Resolution shall take effect upon its passage and approval.

Kathleen J. Herron
Metro Council Clerk

Kevin J. Kramer
President of the Council

Jerry E. Abramson
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

RESOLUTION NO. _____, SERIES 2006

A RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A TRANSPORTATION ENHANCEMENT GRANT FROM THE KENTUCKY TRANSPORTATION CABINET IN THE AMOUNT OF APPROXIMATELY \$300,000.00 TO BE USED BY PLANNING AND DESIGN SERVICES FOR THE BEARGRASS CREEK TRAIL.

Sponsored By: COUNCILMAN RICK BLACKWELL

WHEREAS, the application for the Grant has been reviewed and approved by the Kentucky Transportation Cabinet; and

WHEREAS, the Metro Government wishes to take advantage of this funding opportunity through Planning and Design Services.

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The Mayor is hereby authorized to accept the Transportation Enhancement grant from the Kentucky Transportation Cabinet in the amount of approximately \$300,000.00 to be received by Planning and Design Services.

SECTION II: This Resolution shall take effect upon its passage and approval.

Kathleen J. Herron
Metro Council Clerk

Kevin J. Kramer
President of the Council

Jerry E. Abramson
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

ORDINANCE NO. _____, SERIES 2006

AN ORDINANCE GRANTING A TELECOMMUNICATIONS SERVICES FRANCHISE TO WITEL COMMUNICATIONS, LLC PURSUANT TO SECTION 116.70 ET SEQ. OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES [LMCO]; AND TERMINATING PREVIOUS LICENSE AGREEMENTS ENTERED INTO WITH THE FORMER CITY OF LOUISVILLE, AND WITH JEFFERSON COUNTY, KENTUCKY.

SPONSORED BY: COUNCILMAN TOM OWEN

WHEREAS, LMCO 116.70 et seq. [the “Telecommunications Services Ordinance”] provides for the grant of franchises to eligible communications services providers for the right and privilege to construct, own, operate, repair, replace, and maintain facilities in, through, and along public rights of way within Jefferson County; and

WHEREAS, WiTel Communications, LLC (hereafter, “WiTel”) has submitted the requisite application pursuant to LMCO 116.71(D) and 116.74(B), which application has been reviewed and approved by the Director of the Metro Department of Public Works; and

WHEREAS, On September 28, 1999, WiTel entered into a ten-year license agreement with the former City of Louisville, Kentucky, and April 2000 entered into a temporary license agreement with Jefferson County, Kentucky (hereafter, the “license agreements”) which license agreements gave WiTel certain rights to construct and place telecommunications facilities with public rights of way

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

Section I: GRANT OF FRANCHISE A non-exclusive telecommunications services franchise is hereby granted to WiTel Communications, LLC subject to all the terms, conditions, and restrictions set forth in the Telecommunications Services Ordinance for the right to construct, own, operate, repair, replace, and maintain facilities in, through, and along Metro Louisville rights of way pursuant to (a) the terms, conditions, and representations set forth in its application, (b) the provisions of the Telecommunications Services Ordinance, and (c) to the extent such does not impair the rights of any other franchisee under the terms of its franchise.

SECTION II: Term

The term of the franchise granted herein shall be fifteen (15) years from the effective date of this ordinance.

SECTION III: Termination of Previous License Agreements

The license agreements are terminated as of the effective date of this ordinance.

SECTION IV: Effective Date

This ordinance shall take effect upon its passage and approval, and upon compliance by Louisville Data Link, LLC with LMCO Sections 116.71(F)(1) through (4).

Kathleen J. Herron
Metro Council Clerk

Kevin J. Kramer
President of the Council

Jerry E. Abramson
Mayor

Approved: _____
Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

Telecom Services Franchise - WilTel Communications - 25 Jan 2006 roc/wtw

Ordinance No. _____, Series 2006

**AN ORDINANCE CREATING A NEW CHAPTER, 164,
WITHIN LOUISVILLE METRO CODE OF ORDINANCES
(LMCO) TITLE XV, TO BE TITLED “SYSTEM
DEVELOPMENT CHARGES FOR ROADWAYS.”**

Sponsored by: Council Member Robin Engel

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT [THE COUNCIL] AS
FOLLOWS:**

SECTION I. That a new chapter within Title XV of the Louisville Metro Code of Ordinances be created, and shall read as follows:

SYSTEM DEVELOPMENT CHARGES FOR ROADWAYS

Section 164.01 Title

This Chapter shall be known as “System Development Charges for Roadways.”

Section 164.02 Legislative Purpose and Intent

(A) Both population and employment within the Louisville and Jefferson County metropolitan area are growing and creating demands for new residential and nonresidential development. New development creates additional demand and need for public streets and roads.

(B) The protection of the health, safety and general welfare of the citizens of Louisville Metro requires that the public streets and roads be improved to meet the demands for these facilities.

(C) The report titled "System Development Charges for Roadways Report," by Gresham, Smith & Partners, sets forth reasonable methodologies and analyses to determine the impacts of various types of residential development on the public streets and roads, and to determine the cost to improve the public streets and roads through System Development Charges.

(D) There is both a rational nexus and a rough proportionality between the development impacts created by each type of development covered by this Ordinance and the Transportation Systems Development Charges that such development will be required to pay.

(E) This Ordinance creates a system by which System Development Charges for Roadways will be used to expand or improve the public streets and roads, so that the payor will receive a corresponding benefit within a reasonable period of time after the charge is paid.

(F) The intent of this Ordinance is to ensure that adequate public streets and roads are available to serve growth and development in Louisville Metro, so that growth and development bear their proportionate share of the cost of improvements to these facilities.

(G) The intent of this Ordinance is to create a partnership between the private sector and the public sector for the improvement of public roadways. It is expressly acknowledged that it is not the intent of this Ordinance to collect any money in excess of the actual amount necessary to offset demands generated by a new development.

Section 164.10 Rules of Construction, Severability

(A) For the purposes of administration and enforcement of this Ordinance, unless otherwise stated in this Chapter, the following rules of construction shall apply:

(1) In case of any difference in meaning or implication between the text of this Ordinance and any caption, illustration, summary table or illustrative table, the text shall control.

(2) The word “shall” is always mandatory and not discretionary. The word “may” is always permissive.

(3) Words used in the present tense shall include the future tense, and words used in the singular number shall include the plural number, and vice versa, unless the context clearly indicates the contrary.

(4) The word “party” indicates an individual, a corporation, a partnership, an incorporated association, or any other entity.

(5) Unless the context clearly indicates to the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the

conjunction “and,” “or,” or “either...or,” the conjunction shall be interpreted as follows:

(a) “And” indicates that all the connected terms, conditions, provisions or events shall apply.

(b) “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

(c) “Either...or” indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(6) The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(7) Where a road right-of-way is used to define Transportation Benefit District boundaries, that portion of the boundary road demarcating the Transportation Benefit District boundary may be considered as part of either, or both, Transportation Benefit Districts it bounds. Funds from either or both Transportation Benefit Districts that are defined by a common boundary road may be used to make improvements to that boundary road.

(8) If any one phrase, clause, sentence, provision, paragraph, section or part of this Ordinance shall judicially be declared to be invalid or unconstitutional, the remaining phrases, clauses, sentences, provisions, paragraphs, sections or parts thereof shall not be affected, but shall remain in full force and effect.

ACCESSORY USE / STRUCTURE. A use or structure which is clearly incidental to, customarily found in association with, and serves a principal use; is subordinate in purpose, area, or extent to the principal use served; and is located on the same building site as the principal use. This term shall be deemed to include accessory service uses, accessory private garages, home occupations, accessory tennis courts, accessory parking facilities, ground-mounted satellite dish antennas and solar energy systems which have the purpose of providing energy for heating and cooling of the principal use.

ADDITION. An extension or increase in floor area or height of a building or structure.

ADMINISTRATIVE FEES. The costs of implementing or maintaining the System Development Charges Program, including salaries for any employees dedicated to the program, the costs of purchasing, running, maintaining and upgrading software needed to carry out the program, and any other expenses associated with the implementation or maintenance of the Program.

ALTERATION. Any construction or renovation to an existing structure other than repair or addition.

BUILDING. Any permanent structure designed or built for the support, shelter or protection of persons, animals, chattel or property of any kind. This term includes mobile homes, but does not include awnings, canopies or similar structures. In this Ordinance, references to buildings include structures.

CONTRIBUTION OF LAND, MONEY, OR SERVICES. Contributions, payments, construction or dedications to Louisville Metro that are part of a class of capital facilities normally necessary to accomplish roadway improvements, excluding site-related improvements, which may be used to offset the required System Development Charge.

DESIGNATED ROAD. Based on development demands, system deficiencies and road capacity, roads in need of improvements to serve existing and reasonably foreseeable future development, that may not meet the standards for roadway widths set forth in Chapter 94, and that have been selected for such improvements by the System Development Charges Oversight Committee.

DEVELOPMENT. The performance of any man-made change to improved or unimproved real estate, including, but not limited to, building or mining, dredging, filling, grading, paving, excavating, or drilling operations; the permanent storage of materials and equipment; the making of any material change in the use or appearance of any structure or land; the division of land into two or more parcels; any construction of improvements or clearing or the alteration of any land from a natural state to facilitate a residential, commercial, business, industrial or public use.

DWELLING UNIT. Either a single room or two or more connected rooms sold or leased as a unit, and intended for occupancy for no less than thirty (30) consecutive days or more by one family, and which, at a minimum, contains cooking, toilet and bathing facilities that are accessed independently from any similar such facilities in the same building. This term does not include hotel or motel rooms, extended-stay lodging facilities, nursing-home rooms, or assisted living units.

MOBILE HOME. A structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

NEW RESIDENTIAL DEVELOPMENT. Development that triggers the application of this Ordinance.

NON-DESIGNATED ROADS. Based on development demands, system deficiencies and road capacities, roads that can accommodate existing traffic patterns at their current levels of service, though they may not meet the standards for roadway width set forth in Chapter 94, and on which increased traffic and development demands are not anticipated.

NON-SITE RELATED IMPROVEMENTS. Improvements that are not site-related, and are not constructed specifically to provide access to the proposed development.

PAYOR. The party responsible for paying the System Development Charge.

PERMIT. Any building or construction permit required by local ordinance or the Kentucky Building Code.

PUBLIC ROAD. Any right-of-way created for vehicular traffic, over which the right of access is not restricted, and which is maintained with public funds.

REPAIR. The reconstruction or renewal of any part of an existing building, for the purpose of its maintenance.

ROADWAY IMPROVEMENT. A physical asset, or the cost thereof, which is necessary to provide safe and adequate vehicular travel along a public roadway. This includes, but is not limited to, the cost of transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any road construction project, and also includes construction of through lanes or turn lanes, bridges, or drainage facilities associated with roadway construction, the purchase and installation of traffic signalization, signage or markings, the construction of curbs, medians or shoulders, and the relocation of utilities to accommodate roadway construction.

SITE-RELATED IMPROVEMENT. Any public roadway improvements planned, designed or built to provide necessary access and service to the proposed development, including frontage dedication and widening across frontage; all traffic control devices that primarily give access to the development; acceleration/deceleration lanes and left-turn and right-turn lanes to allow turning movements into or out of the development from site driveways and local and collector streets.

SYSTEM DEVELOPMENT CHARGE. A monetary charge imposed by Louisville Metro upon development activity as a condition of issuance of a residential building permit, in order to pay for public roadway facilities needed to serve new growth and development, and to mitigate the impacts of the development activity on the transportation facilities of Louisville Metro, but not including any permit or application fee.

SYSTEM DEVELOPMENT CHARGE ADMINISTRATOR. The party or parties designated by Louisville Metro to be responsible for administering this Ordinance.

TRANSPORTATION BENEFIT DISTRICT. Geographic areas of Louisville Metro established to prioritize transportation needs and manage capital roadway improvement projects. System Development Charges will be used to improve “designated” public roadways within the Transportation Benefit District in which the charges are assessed.

Section 164.16 Applicability

(A) Requirement.

On and after the effective date of this Ordinance, any party who shall construct a new residential dwelling unit, including but not limited to single family homes, apartments, patio homes, condominiums and mobile or manufactured homes, in one of the Transportation Benefit Districts, shall be obligated to pay a Systems Development Charge for roadways. Parties who apply for building permits up to sixty (60) days after the effective date of this Ordinance shall not be required to pay a System Development Charge.

(B) Payment of Charges

- (1) A party applying for any building or construction permit for a development as set forth in subsection (A), above, shall pay a charge to the Systems

Development Charge Administrator for the amount of space the building permit allows to be constructed, prior to the issuance of such permit.

(2) No permit shall be issued, no connection shall be made, and no such other development shall be occupied or allowed to go into use until the charge required by this Ordinance is paid.

(C) Determination of Charge

(1) The System Development Charge shall be as set forth in Section 164.30 of this Ordinance.

(2) When a proposed development includes two or more types of residential dwelling units in any combination, including two or more types of dwelling units within a building or structure, the total System Development Charge shall be based on the sum of the charges for each type of dwelling unit, unless otherwise provided for in this Ordinance.

(3) If a development required to pay a System Development Charge under this Ordinance is located on a road classified as a Designated Road, the site-related improvements as required by the Planning Commission must be made, and a System Development Charge as set forth in Section 164.30 of this Ordinance must be paid. Any non-site-related improvements made as part of the development process may be used to offset the required System Development Charge, as set forth under 164.17(A)(2) of this Ordinance.

(4) If a development required to pay a System Development Charge under this Ordinance is located on a road not classified as a Designated Road, the road must be improved to meet the requirements set forth in all applicable ordinances of the Louisville Metro Government. Credit will be given for the cost of non-site-related roadway improvements against the System Development Charge due, however, no credit will be given for the cost of improvements that exceed the total System Development Charge due for developments on Non-Designated Roads, and no refund of expenses will be made.

EXAMPLE: A developer chooses to develop a subdivision consisting of 70 single-family homes on property located on Smith Road, five miles from James Road which is a collector level roadway. Both roads are located in a Transportation Benefit District. Smith Road is not classified as a Designated Road and is only 12 feet wide. Based on a traffic study, it was determined that James Road will be the primary route taken to access the subdivision. The developer will be required to improve Smith Road to meet the requirements of all applicable ordinances of the Louisville Metro Government for the five miles between the subdivision and James Road, as well as across the subdivision's frontage, and pay a System Development Charge of \$70,000. The cost of the non-site-related roadway improvements may be used to offset the System Development Charge due, but cannot result in an additional credit or a refund of the cost of improvements in excess of the amount used to offset the System Development Charge.

Section 164.17

Exemptions and Credits

(A) Permitted Exemptions and Credits

(1) The following shall be exempt from the requirements of this Ordinance:

(a) Alteration, expansion or replacement of an existing residential building where no additional dwelling units are created.

(b) The construction of accessory buildings or structures which will not produce additional vehicular trips over and above those produced by the principal building or use of the land.

(c) Any development or construction undertaken by a public entity for public purposes.

(2) The following credits may be used to offset required charges under this Ordinance:

(a) All Non-site Related Roadway Improvements required as a condition of plan approval, except where those improvements are deemed to be site-related;

EXAMPLE: A developer is required to install a left turn lane at a cost of \$100,000, along a portion of a road not directly adjacent to the development. The System Development Charge due for the development is \$200,000. The cost of the left turn lane can be used to offset the \$200,000 charge, so the total charge due would be \$100,000.

(b) The contribution of land (not including frontage dedications), money, or services for the undertaking of

construction or related activities for non-site related improvements to public streets and roads;

(c) Non-site related roadway improvements previously contributed, paid for, or committed to by the property owner or his predecessor in interest as a condition of approval of development of the subject site after December 4, 2003.

(d) The cost of realignment of a roadway, where such realignment is required as a condition of plan approval, regardless of whether such realignment is deemed to be site-related or non-site-related.

(3) Under no circumstances will credits that exceed the System Development Charge due under this Ordinance be permitted to carry over or transfer to another development.

EXAMPLE: A developer is required to install a left turn lane at a cost of \$300,000, along a portion of a Non-Designated Road not directly adjacent to the development. The System Development Charge due for the development is \$200,000. The cost of the left-turn lane may be used to offset the \$200,000 charge, and no charge would be due. However, the difference between the charge (\$200,000) and the cost of the improvement (\$300,000) not used to offset the charge may not be carried over by the developer to offset charges associated with another development, and may not be transferred to another developer to offset a System Development Charge due for another development.

(B) Request for Exemption or Credit Required

(1) If a permit is requested for the proposed development, any claim for exemption or credit must be made no later than the date of the application for the permit for the proposed development.

(2) The Transportation System Development Charge Administrator shall determine the validity of any claim for exemption or credit within 30 days of receiving that claim and shall notify the claimant in writing of the determination. This notification constitutes a final action that may be appealed to the Louisville Metro Code Enforcement Board as described in Section 164.40 of this Ordinance.

Section 164.20 Establishment of Transportation Benefit Districts

(A) Districts Explained

Existing roads that fail to meet the roadway width standards of Chapter 94, are predominantly located within four Transportation Benefit Districts created to prioritize transportation needs and manage capital roadway improvement projects.

(B) Designated Roads

A list of Designated Roads shall be maintained at all times by the System Development Charge Administrator, and updated on an annual basis by the System Development Charge Oversight Committee.

(C) Review Process

(1) There shall be established a System Development Charge Oversight Committee, which shall be responsible for reviewing the classification of roads as designated or non-designated roads, the calculation of charges and amounts charged for each land use, and the determination of Transportation Benefit District boundaries on an annual basis.

(a) The composition of the Oversight Committee shall be as follows:

- (i) System Development Charge Administrator;
- (ii) Director, or designee, of the Department of Planning and Design Services;
- (iii) Director, or designee, of the Department of Public Works;
- (iv) A representative of the Home Builders Association of Louisville selected by that organization;
- (v) A representative of the Louisville Apartment Association selected by that organization;
- (vi) An individual selected by Greater Louisville, Inc.;
- (vii) A neighborhood representative selected by the Planning Committee of the Louisville Metro Planning Commission; and

(viii) A representative of the Kentucky Transportation Cabinet selected by that organization

(2) The aforementioned annual review will be completed no later than January 31 of each year.

(3) Upon completion of the annual review, the Oversight Committee will issue a report of its findings, which shall be made available to the public.

Section 164.30 Charge Schedule

(A) Calculation of the Charge

(1) The Louisville Metro Government shall calculate the System Development Charge due by:

(a) Verifying the number and type of dwelling units that are proposed to be constructed, as shown on the building permit application;

(b) Determining the System Development Charge that shall be applied for each dwelling unit, in accordance with subsection (2), below; and

(c) Multiplying the number of dwelling units by the applicable System Development Charge.

(2) The applicable System Development Charge by land use for each of the Transportation Benefit Districts is as follows:

- (a) For single family detached units, detached condominium units, and mobile homes, the System Development Charge shall be \$1,000.00 per unit.
- (b) For attached condominium units, the System Development Charge shall be \$500.00 per unit.
- (c) For multi-family apartment (for rent) units, the System Development Charge shall be \$250.00 per unit.

(B) Re-use and Mixed-Use Development

(1) For expansion of an existing development under an approved development plan where additional dwelling units will be constructed, the System Development Charge shall be based on the portion of the development in excess of what was permitted under the approved development plan. No Charge shall be required for construction under a development plan approved prior to the effective date of this Ordinance, if a valid building permit has been issued prior to that date. However, a System Development Charge will be due for portions of the development that have not yet been issued a valid building permit as of the effective date of this Ordinance.

EXAMPLE: A developer obtained approval of a development plan for a single-family subdivision on October 10, 2004, prior to the effective date of this Ordinance. The developer has valid building permits issued in November, 2004, for 10 homes to be constructed in the subdivision, but has not yet obtained building permits for an additional 60 single-family homes to be constructed under the development plan. No System Development Charge will be required for the 10 homes authorized to be constructed under the existing building permits, however the developer will be required to pay the System Development Charge—in this case, \$60,000—for the construction of the remainder of the homes to be located in the subdivision.

(2) For a proposed mixed use development, the number of proposed residential dwelling units shall be used to determine the appropriate System Development Charge for the development.

(3) For mixed commercial and residential developments where the residential component is incidental to the commercial component, the cost of roadway improvements made as a result of the commercial component of the development may be used to offset the System Development Charge due for the residential component.

EXAMPLE: A developer proposes a shopping center with 100 patio homes incorporated into the design. The roadway improvements necessitated by the commercial component of the development will cost \$250,000. The System Development Charge due for the residential component is \$50,000. The cost of the roadway improvements can be used to offset the Charge due for the residential portion of the development. The developer will be required to pay for the total cost of the roadway improvements necessitated by the commercial development, but will not be required to pay the Charge.

(A) Use of Funds

(1) Any funds collected under this Ordinance are expressly designated for public street and road improvements within the Transportation Benefit Districts from which those funds were collected, for payment of administrative fees, as well as for payment of consultant fees that are necessary to update the designated roads and Transportation Benefit Districts.

(a) No public street or road outside a Transportation Benefit District will be improved using funds collected under this Ordinance.

(b) Annually, an amount not to exceed the cost of administering this Ordinance may be transferred to the Louisville Metro General Fund for the purpose of paying the administrative fees associated with the System Development Charge Program, which shall be determined based on an annual audit.

(c) Charges shall be deemed to be spent on the basis that the first Charges collected shall be the first Charges spent.

(d) The Louisville Metro Finance Department shall maintain and keep financial records for System Development Charges, which shall show the source and disbursement of all Charges collected in, or expended from, each Transportation Benefit District Fund. The records of the Funds into which System Development Charges are deposited shall be open for public inspection, in accordance with Louisville Metro open records policies, during ordinary business hours. An annual financial analysis of all funds collected and expended under this Ordinance shall be performed by an independent auditor to be designated by the System Development Charge Oversight Committee.

(2) System Development Charges shall be transferred from the System Development Charge Administrator to the Louisville Metro Department of Finance and either:

(a) immediately used for the retirement of bonds issued to support the improvement of designated roads in each Transportation Benefit District; or

(b) placed into a trust fund, as described in subsection (A)(3), specifically designated for the Transportation Benefit District from which the Charges were collected, for later use

in the payment of costs of improving designated roads in that Transportation Benefit District.

(3) Creation of Trust Funds

(a) A System Development Charge trust account for each of the four (4) Transportation Benefit Districts shall be opened as a separate interest-bearing account that is segregated from the Louisville Metro general fund.

(b) System Development Charges deposited into the trust accounts, and all interest accrued on those accounts, shall be used solely for the purpose of public street and road improvements in the Transportation Benefit District from which the Charges were collected, the payment of administrative fees, and the payment of consultant fees to update the designated roads and Transportation Benefit Districts.

(c) All income derived from the interest accrued on these accounts shall be retained in the trust account on which the interest was earned.

(B) Refunds

(1) Passage of Time

Any funds in any System Development Charge trust account that have not been spent or encumbered within ten (10) years of the date on which such funds were paid shall, upon written request to the System Development Charge Administrator in accordance with subsection (5), be returned to the payor. Within six months after the ten-year period from the date on which the unspent charges were paid, the System Development Charge Administrator shall notify the payor of eligibility for a refund. The payor is responsible for maintaining a current address with the System Development Charge Administrator. Any funds for which no petition for refund has been received following 12 months of the date the payor was notified of eligibility for refund shall be retained by the Louisville Metro Government. These funds shall be expended on the type of public street and road improvements reflected in the title of the account without further limitations as to time of expenditure.

(2) Expiration of Permit

If a party has paid a System Development Charge required by this Ordinance and has:

(a) obtained a building permit or any other permit for a development or extensions thereto;

(b) the permit or extension for which the Charge was paid later expires without the possibility for future extension; and

(c) the development activity for which the permit was issued did not occur and no impact has resulted;

such party shall be eligible for a refund of the Charge paid. In order to be eligible to receive such refund, the party shall be required to submit a written request to the System Development Charge Administrator in accordance with subsection (5), within six months after the expiration of the permit, or extension for which the Charge was paid. Interest accrued on the Charge shall not be included in the refund.

(3) No Refund for Altered Development

After a System Development Charge has been paid pursuant to this Ordinance, no refund of all or part of the Charge shall be made if the development for which the Charge was paid is later demolished or destroyed, or is altered or reconfigured so as to reduce the size of the development, the number of units in the development, or the amount of traffic generated by the development.

(4) Involuntary Demolition or Destruction

In the event a development for which a System Development Charge was paid is involuntarily demolished or destroyed, an additional Charge is not required where reconstruction follows the development plan under which the Charge was originally required. If the reconstruction deviates from the original development plan, an additional Charge will be required for any net increase in the development.

EXAMPLE: A tornado destroys a partially built condominium development for which a System Development Charge of \$5,000 was required. To reconstruct the development according to the original development plan for which the \$5,000 was paid, the developer would not be required to pay an additional System Development Charge. However, if the developer wanted to increase the number of units in the development, a Charge equal to the difference between the original charge paid and the charge for the larger development (which reflects the net increase in the number of units to be constructed) would be required.

(5) Request for Refund

(a) In order to obtain a refund of payments made, the payor must submit a written request to the System Development Charge Administrator within the time period designated in subsections (1) or (2). The written request must contain the following information:

(i) A copy of the dated receipt issued for payment of the System-Development Charge; and

(ii) Any other proof of entitlement to the refund of Charges as may be required by the System Development Charge Administrator.

(b) Within thirty (30) days after the date of receipt of the written request, the System Development Charge Administrator shall review the written request and determine if it is complete. If the Administrator determines that the written request is not complete, a written statement specifying the deficiencies shall be sent to the payor by certified mail. Unless the deficiencies are corrected within seven (7) days, the System Development Charge Administrator shall take no further action on the written request.

(c) When the System Development Charge Administrator determines that the written request is complete, it shall be reviewed within one (1) month. The Administrator shall approve the refund request if it is determined that the requirements of either subsection (1) or (2) have been met. The refund shall include the Charge paid, but shall not

include interest, unless otherwise provided for in this Ordinance.

Section 164.40 Appeals

(A) An aggrieved party may appeal the determination of any official of the Louisville Metro Government with regard to the administration of this Ordinance by submitting an appeal in writing, and requesting a hearing before the Louisville Metro Code Enforcement Board. The request shall include a written explanation of why the aggrieved party feels that a determination was in error.

(B) The Louisville Metro Code Enforcement Board ("Board") shall hold a hearing in accordance with Section 32.275, *et seq.*

(1) The Board shall be required to set forth specific and detailed written findings of fact with respect to each controverted issue on appeal, as a part of its final order.

(2) In an appeal of the imposition of a System Development Charge, the Board shall not waive the Charge, although it shall be authorized to reduce the Charge:

(a) in order to promote the public health, welfare or safety or to encourage the economic development of Louisville Metro; or

(b) upon a finding that the Charges were improperly calculated; or

(c) upon a finding that the unusual circumstances of the development demonstrate that application of the Charge to the development would be unfair or unjust.

The determination of the Louisville Metro Code Enforcement Board shall be final.

Section 164.98 Severability

If any section, subsection, sentence or clause of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, then such portion shall be deemed a separate, distinct and independent provisions and such holding shall not affect the validity of the remaining portions of this chapter.

SECTION II. This Ordinance shall take effect upon its passage and approval.

Kathleen J. Herron
Metro Council Clerk

Kevin J. Kramer
President of the Council

Jerry E. Abramson
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

Ordinance No. _____, Series 2005

**AN ORDINANCE CREATING A NEW CHAPTER, 164,
WITHIN LOUISVILLE METRO CODE OF ORDINANCES
(LMCO) TITLE XV, TO BE TITLED “SYSTEM
DEVELOPMENT CHARGES FOR ROADWAYS” (AS
AMENDED).**

Sponsored by: Council Member Robin Engel

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT [THE COUNCIL] AS
FOLLOWS:**

SECTION I. That a new chapter within Title XV of the Louisville Metro Code of Ordinances be created, and shall read as follows:

SYSTEM DEVELOPMENT CHARGES FOR ROADWAYS

Section 164.01 Title

This Chapter shall be known as “System Development Charges for Roadways.”

Section 164.02 Legislative Purpose and Intent

(A) Both population and employment within the Louisville and Jefferson County metropolitan area are growing and creating demands for new residential and nonresidential development. New development creates additional demand and need for public streets and roads.

(B) The protection of the health, safety and general welfare of the citizens of Louisville Metro requires that the public streets and roads be improved to meet the demands for these facilities.

(C) The report titled "System Development Charges for Roadways Report," by Gresham, Smith & Partners, sets forth reasonable methodologies and analyses to determine the impacts of various types of residential development on the public streets and roads, and to determine the cost to improve the public streets and roads through System Development Charges.

(D) There is both a rational nexus and a rough proportionality between the development impacts created by each type of development covered by this Ordinance and the Transportation Systems Development Charges that such development will be required to pay.

(E) This Ordinance creates a system by which System Development Charges for Roadways will be used to expand or improve the public streets and roads, so that the payor will receive a corresponding benefit within a reasonable period of time after the charge is paid.

(F) The intent of this Ordinance is to ensure that adequate public streets and roads are available to serve growth and development in Louisville Metro, so that growth and development bear their proportionate share of the cost of improvements to these facilities.

(G) The intent of this Ordinance is to create a partnership between the private sector and the public sector for the improvement of public roadways. It is expressly acknowledged that it is not the intent of this Ordinance to collect any money in excess of the actual amount necessary to offset demands generated by a new development.

Section 164.10 Rules of Construction, Severability

(A) For the purposes of administration and enforcement of this Ordinance, unless otherwise stated in this Chapter, the following rules of construction shall apply:

(1) In case of any difference in meaning or implication between the text of this Ordinance and any caption, illustration, summary table or illustrative table, the text shall control.

(2) The word “shall” is always mandatory and not discretionary. The word “may” is always permissive.

(3) Words used in the present tense shall include the future tense, and words used in the singular number shall include the plural number, and vice versa, unless the context clearly indicates the contrary.

(4) The word “party” indicates an individual, a corporation, a partnership, an incorporated association, or any other entity.

(5) Unless the context clearly indicates to the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the

conjunction “and,” “or,” or “either...or,” the conjunction shall be interpreted as follows:

(a) “And” indicates that all the connected terms, conditions, provisions or events shall apply.

(b) “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

(c) “Either...or” indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(6) The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(7) Where a road right-of-way is used to define Transportation Benefit District boundaries, that portion of the boundary road demarcating the Transportation Benefit District boundary may be considered as part of either, or both, Transportation Benefit Districts it bounds. Funds from either or both Transportation Benefit Districts that are defined by a common boundary road may be used to make improvements to that boundary road.

(8) If any one phrase, clause, sentence, provision, paragraph, section or part of this Ordinance shall judicially be declared to be invalid or unconstitutional, the remaining phrases, clauses, sentences, provisions, paragraphs, sections or parts thereof shall not be affected, but shall remain in full force and effect.

ACCESSORY USE / STRUCTURE. A use or structure which is clearly incidental to, customarily found in association with, and serves a principal use; is subordinate in purpose, area, or extent to the principal use served; and is located on the same building site as the principal use. This term shall be deemed to include accessory service uses, accessory private garages, home occupations, accessory tennis courts, accessory parking facilities, ground-mounted satellite dish antennas and solar energy systems which have the purpose of providing energy for heating and cooling of the principal use.

ADDITION. An extension or increase in floor area or height of a building or structure.

ADMINISTRATIVE FEES. The costs of implementing or maintaining the System Development Charges Program, including salaries for any employees dedicated to the program, the costs of purchasing, running, maintaining and upgrading software needed to carry out the program, and any other expenses associated with the implementation or maintenance of the Program.

ALTERATION. Any construction or renovation to an existing structure other than repair or addition.

BUILDING. Any permanent structure designed or built for the support, shelter or protection of persons, animals, chattel or property of any kind. This term includes mobile homes, but does not include awnings, canopies or similar structures. In this Ordinance, references to buildings include structures.

CONTRIBUTION OF LAND, MONEY, OR SERVICES. Contributions, payments, construction or dedications to Louisville Metro that are part of a class of capital facilities normally necessary to accomplish roadway improvements, excluding site-related improvements, which may be used to offset the required System Development Charge.

DESIGNATED ROAD. Based on development demands, system deficiencies and road capacity, roads in need of improvements to serve existing and reasonably foreseeable future development, that may not meet the standards for roadway widths set forth in Chapter 94, and that have been selected for such improvements by the System Development Charges Oversight Committee.

DEVELOPMENT. The performance of any man-made change to improved or unimproved real estate, including, but not limited to, building or mining, dredging, filling, grading, paving, excavating, or drilling operations; the permanent storage of materials and equipment; the making of any material change in the use or appearance of any structure or land; the division of land into two or more parcels; any construction of improvements or clearing or the alteration of any land from a natural state to facilitate a residential, commercial, business, industrial or public use.

DWELLING UNIT. Either a single room or two or more connected rooms sold or leased as a unit, and intended for occupancy for no less than thirty (30) consecutive days or more by one family, and which, at a minimum, contains cooking, toilet and bathing facilities that are accessed independently from any similar such facilities in the same building. This term does not include hotel or motel rooms, extended-stay lodging facilities, nursing-home rooms, or assisted living units.

MOBILE HOME. A structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

NEW RESIDENTIAL DEVELOPMENT. Development that triggers the application of this Ordinance.

NON-DESIGNATED ROADS. Based on development demands, system deficiencies and road capacities, roads that can accommodate existing traffic patterns at their current levels of service, though they may not meet the standards for roadway width set forth in Chapter 94, and on which increased traffic and development demands are not anticipated.

NON-SITE RELATED IMPROVEMENTS. Improvements that are not site-related, and are not constructed specifically to provide access to the proposed development.

PAYOR. The party responsible for paying the System Development Charge.

PERMIT. Any building or construction permit required by local ordinance or the Kentucky Building Code.

PUBLIC ROAD. Any right-of-way created for vehicular traffic, over which the right of access is not restricted, and which is maintained with public funds.

REPAIR. The reconstruction or renewal of any part of an existing building, for the purpose of its maintenance.

ROADWAY IMPROVEMENT. A physical asset, or the cost thereof, which is necessary to provide safe and adequate vehicular travel along a public roadway. This includes, but is not limited to, the cost of transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any road construction project, and also includes construction of through lanes or turn lanes, bridges, or drainage facilities associated with roadway construction, the purchase and installation of traffic signalization, signage or markings, the construction of curbs, medians or shoulders, and the relocation of utilities to accommodate roadway construction.

SITE-RELATED IMPROVEMENT. Any public roadway improvements planned, designed or built to provide necessary access and service to the proposed development, including frontage dedication and widening across frontage; all traffic control devices that primarily give access to the development; acceleration/deceleration lanes and left-turn and right-turn lanes to allow turning movements into or out of the development from site driveways and local and collector streets.

SYSTEM DEVELOPMENT CHARGE. A monetary charge imposed by Louisville Metro upon development activity as a condition of issuance of a residential building permit, in order to pay for public roadway facilities needed to serve new growth and development, and to mitigate the impacts of the development activity on the transportation facilities of Louisville Metro, but not including any permit or application fee.

SYSTEM DEVELOPMENT CHARGE ADMINISTRATOR. The party or parties designated by Louisville Metro to be responsible for administering this Ordinance.

TRANSPORTATION BENEFIT DISTRICT. Geographic areas of Louisville Metro established to prioritize transportation needs and manage capital roadway improvement projects. System Development Charges will be used to improve “designated” public roadways within the Transportation Benefit District in which the charges are assessed.

Section 164.16 Applicability

(A) Requirement.

On and after the effective date of this Ordinance, any party who shall construct a new residential dwelling unit, including but not limited to single family homes, apartments, patio homes, condominiums and mobile or manufactured homes, in one of the Transportation Benefit Districts, shall be obligated to pay a Systems Development Charge for roadways. Parties who apply for building permits up to sixty (60) days after the effective date of this Ordinance shall not be required to pay a System Development Charge.

(B) Payment of Charges

- (1) A party applying for any building or construction permit for a development as set forth in subsection (A), above, shall pay a charge to the Systems

Development Charge Administrator for the amount of space the building permit allows to be constructed, prior to the issuance of such permit.

(2) No permit shall be issued, no connection shall be made, and no such other development shall be occupied or allowed to go into use until the charge required by this Ordinance is paid.

(C) Determination of Charge

(1) The System Development Charge shall be as set forth in Section 164.30 of this Ordinance.

(2) When a proposed development includes two or more types of residential dwelling units in any combination, including two or more types of dwelling units within a building or structure, the total System Development Charge shall be based on the sum of the charges for each type of dwelling unit, unless otherwise provided for in this Ordinance.

(3) If a development required to pay a System Development Charge under this Ordinance is located on a road classified as a Designated Road, the site-related improvements as required by the Planning Commission must be made, and a System Development Charge as set forth in Section 164.30 of this Ordinance must be paid. Any non-site-related improvements made as part of the development process may be used to offset the required System Development Charge, as set forth under 164.17(A)(2) of this Ordinance.

(4) If a development required to pay a System Development Charge under this Ordinance is located on a road not classified as a Designated Road, the road must be improved to meet the requirements set forth in all applicable ordinances of the Louisville Metro Government. Credit will be given for the cost of non-site-related roadway improvements against the System Development Charge due, however, no credit will be given for the cost of improvements that exceed the total System Development Charge due for developments on Non-Designated Roads, and no refund of expenses will be made.

EXAMPLE: A developer chooses to develop a subdivision consisting of 70 single-family homes on property located on Smith Road, five miles from James Road which is a collector level roadway. Both roads are located in a Transportation Benefit District. Smith Road is not classified as a Designated Road and is only 12 feet wide. Based on a traffic study, it was determined that James Road will be the primary route taken to access the subdivision. The developer will be required to improve Smith Road to meet the requirements of all applicable ordinances of the Louisville Metro Government for the five miles between the subdivision and James Road, as well as across the subdivision's frontage, and pay a System Development Charge of \$70,000. The cost of the non-site-related roadway improvements may be used to offset the System Development Charge due, but cannot result in an additional credit or a refund of the cost of improvements in excess of the amount used to offset the System Development Charge.

Section 164.17

Exemptions and Credits

(A) Permitted Exemptions and Credits

(1) The following shall be exempt from the requirements of this Ordinance:

(a) Alteration, expansion or replacement of an existing residential building where no additional dwelling units are created.

(b) The construction of accessory buildings or structures which will not produce additional vehicular trips over and above those produced by the principal building or use of the land.

(c) Any development or construction undertaken by a public entity for public purposes.

(2) The following credits may be used to offset required charges under this Ordinance:

(a) All Non-site Related Roadway Improvements required as a condition of plan approval, except where those improvements are deemed to be site-related;

EXAMPLE: A developer is required to install a left turn lane at a cost of \$100,000, along a portion of a road not directly adjacent to the development. The System Development Charge due for the development is \$200,000. The cost of the left turn lane can be used to offset the \$200,000 charge, so the total charge due would be \$100,000.

(b) The contribution of land (not including frontage dedications), money, or services for the undertaking of

construction or related activities for non-site related improvements to public streets and roads;

(c) Non-site related roadway improvements previously contributed, paid for, or committed to by the property owner or his predecessor in interest as a condition of approval of development of the subject site after December 4, 2003.

(d) The cost of realignment of a roadway, where such realignment is required as a condition of plan approval, regardless of whether such realignment is deemed to be site-related or non-site-related.

(3) Under no circumstances will credits that exceed the System Development Charge due under this Ordinance be permitted to carry over or transfer to another development.

EXAMPLE: A developer is required to install a left turn lane at a cost of \$300,000, along a portion of a Non-Designated Road not directly adjacent to the development. The System Development Charge due for the development is \$200,000. The cost of the left-turn lane may be used to offset the \$200,000 charge, and no charge would be due. However, the difference between the charge (\$200,000) and the cost of the improvement (\$300,000) not used to offset the charge may not be carried over by the developer to offset charges associated with another development, and may not be transferred to another developer to offset a System Development Charge due for another development.

(B) Request for Exemption or Credit Required

(1) If a permit is requested for the proposed development, any claim for exemption or credit must be made no later than the date of the application for the permit for the proposed development.

(2) The Transportation System Development Charge Administrator shall determine the validity of any claim for exemption or credit within 30 days of receiving that claim and shall notify the claimant in writing of the determination. This notification constitutes a final action that may be appealed to the Louisville Metro Code Enforcement Board as described in Section 164.40 of this Ordinance.

Section 164.20

Establishment of Transportation Benefit Districts

(A) Districts Explained

Existing roads that fail to meet the roadway width standards of Chapter 94, are predominantly located within four Transportation Benefit Districts created to prioritize transportation needs and manage capital roadway improvement projects.

(B) Designated Roads

A list of Designated Roads shall be maintained at all times by the System Development Charge Administrator, and updated on an annual basis by the System Development Charge Oversight Committee.

(C) Review Process

(1) There shall be established a System Development Charge Oversight Committee, which shall be responsible for reviewing the classification of roads as designated or non-designated roads, the calculation of charges and amounts charged for each land use, and the determination of Transportation Benefit District boundaries on an annual basis.

(a) The composition of the Oversight Committee shall be as follows:

- (i) System Development Charge Administrator;
- (ii) Director, or designee, of the Department of Planning and Design Services;
- (iii) Director, or designee, of the Department of Public Works;
- (iv) A representative of the Home Builders Association of Louisville selected by that organization;
- (v) A representative of the Louisville Apartment Association selected by that organization;
- (vi) An individual selected by Greater Louisville, Inc.;
- (vii) A neighborhood representative selected by the Planning Committee of the Louisville Metro Planning Commission; and

(viii) A representative of the Kentucky Transportation Cabinet selected by that organization

(2) The aforementioned annual review will be completed no later than January 31 of each year.

(3) Upon completion of the annual review, the Oversight Committee will issue a report of its findings, which shall be made available to the public.

Section 164.30 Charge Schedule

(A) Calculation of the Charge

(1) The Louisville Metro Government shall calculate the System Development Charge due by:

(a) Verifying the number and type of dwelling units that are proposed to be constructed, as shown on the building permit application;

(b) Determining the System Development Charge that shall be applied for each dwelling unit, in accordance with subsection (2), below; and

(c) Multiplying the number of dwelling units by the applicable System Development Charge.

(2) The applicable System Development Charge by land use for each of the Transportation Benefit Districts is as follows:

- (a) For single family detached units, detached condominium units, and mobile homes, the System Development Charge shall be \$1,000.00 per unit.
- (b) For attached condominium units, the System Development Charge shall be \$500.00 per unit.
- (c) For multi-family apartment (for rent) units, the System Development Charge shall be \$250.00 per unit.

(B) Re-use and Mixed-Use Development

(1) For expansion of an existing development under an approved development plan where additional dwelling units will be constructed, the System Development Charge shall be based on the portion of the development in excess of what was permitted under the approved development plan. No Charge shall be required for construction under a development plan approved prior to the effective date of this Ordinance, if a valid building permit has been issued prior to that date. However, a System Development Charge will be due for portions of the development that have not yet been issued a valid building permit as of the effective date of this Ordinance.

EXAMPLE: A developer obtained approval of a development plan for a single-family subdivision on October 10, 2004, prior to the effective date of this Ordinance. The developer has valid building permits issued in November, 2004, for 10 homes to be constructed in the subdivision, but has not yet obtained building permits for an additional 60 single-family homes to be constructed under the development plan. No System Development Charge will be required for the 10 homes authorized to be constructed under the existing building permits, however the developer will be required to pay the System Development Charge—in this case, \$60,000—for the construction of the remainder of the homes to be located in the subdivision.

(2) For a proposed mixed use development, the number of proposed residential dwelling units shall be used to determine the appropriate System Development Charge for the development.

(3) For mixed commercial and residential developments where the residential component is incidental to the commercial component, the cost of roadway improvements made as a result of the commercial component of the development may be used to offset the System Development Charge due for the residential component.

EXAMPLE: A developer proposes a shopping center with 100 patio homes incorporated into the design. The roadway improvements necessitated by the commercial component of the development will cost \$250,000. The System Development Charge due for the residential component is \$50,000. The cost of the roadway improvements can be used to offset the Charge due for the residential portion of the development. The developer will be required to pay for the total cost of the roadway improvements necessitated by the commercial development, but will not be required to pay the Charge.

(A) Use of Funds

(1) Any funds collected under this Ordinance are expressly designated for public street and road improvements within the Transportation Benefit Districts from which those funds were collected, for payment of administrative fees, as well as for payment of consultant fees that are necessary to update the designated roads and Transportation Benefit Districts.

(a) No public street or road outside a Transportation Benefit District will be improved using funds collected under this Ordinance.

(b) Annually, an amount not to exceed the cost of administering this Ordinance may be transferred to the Louisville Metro General Fund for the purpose of paying the administrative fees associated with the System Development Charge Program, which shall be determined based on an annual audit.

(c) Charges shall be deemed to be spent on the basis that the first Charges collected shall be the first Charges spent.

(d) The Louisville Metro Finance Department shall maintain and keep financial records for System Development Charges, which shall show the source and disbursement of all Charges collected in, or expended from, each Transportation Benefit District Fund. The records of the Funds into which System Development Charges are deposited shall be open for public inspection, in accordance with Louisville Metro open records policies, during ordinary business hours. An annual financial analysis of all funds collected and expended under this Ordinance shall be performed by an independent auditor to be designated by the System Development Charge Oversight Committee.

(2) System Development Charges shall be transferred from the System Development Charge Administrator to the Louisville Metro Department of Finance and either:

(a) immediately used for the retirement of bonds issued to support the improvement of designated roads in each Transportation Benefit District; or

(b) placed into a trust fund, as described in subsection (A)(3), specifically designated for the Transportation Benefit District from which the Charges were collected, for later use

in the payment of costs of improving designated roads in that Transportation Benefit District.

(3) Creation of Trust Funds

(a) A System Development Charge trust account for each of the four (4) Transportation Benefit Districts shall be opened as a separate interest-bearing account that is segregated from the Louisville Metro general fund.

(b) System Development Charges deposited into the trust accounts, and all interest accrued on those accounts, shall be used solely for the purpose of public street and road improvements in the Transportation Benefit District from which the Charges were collected, the payment of administrative fees, and the payment of consultant fees to update the designated roads and Transportation Benefit Districts.

(c) All income derived from the interest accrued on these accounts shall be retained in the trust account on which the interest was earned.

(B) Refunds

(1) Passage of Time

Any funds in any System Development Charge trust account that have not been spent or encumbered within ten (10) years of the date on which such funds were paid shall, upon written request to the System Development Charge Administrator in accordance with subsection (5), be returned to the payor. Within six months after the ten-year period from the date on which the unspent charges were paid, the System Development Charge Administrator shall notify the payor of eligibility for a refund. The payor is responsible for maintaining a current address with the System Development Charge Administrator. Any funds for which no petition for refund has been received following 12 months of the date the payor was notified of eligibility for refund shall be retained by the Louisville Metro Government. These funds shall be expended on the type of public street and road improvements reflected in the title of the account without further limitations as to time of expenditure.

(2) Expiration of Permit

If a party has paid a System Development Charge required by this Ordinance and has:

(a) obtained a building permit or any other permit for a development or extensions thereto;

(b) the permit or extension for which the Charge was paid later expires without the possibility for future extension; and

(c) the development activity for which the permit was issued did not occur and no impact has resulted;

such party shall be eligible for a refund of the Charge paid. In order to be eligible to receive such refund, the party shall be required to submit a written request to the System Development Charge Administrator in accordance with subsection (5), within six months after the expiration of the permit, or extension for which the Charge was paid. Interest accrued on the Charge shall not be included in the refund.

(3) No Refund for Altered Development

After a System Development Charge has been paid pursuant to this Ordinance, no refund of all or part of the Charge shall be made if the development for which the Charge was paid is later demolished or destroyed, or is altered or reconfigured so as to reduce the size of the development, the number of units in the development, or the amount of traffic generated by the development.

(4) Involuntary Demolition or Destruction

In the event a development for which a System Development Charge was paid is involuntarily demolished or destroyed, an additional Charge is not required where reconstruction follows the development plan under which the Charge was originally required. If the reconstruction deviates from the original development plan, an additional Charge will be required for any net increase in the development.

EXAMPLE: A tornado destroys a partially built condominium development for which a System Development Charge of \$5,000 was required. To reconstruct the development according to the original development plan for which the \$5,000 was paid, the developer would not be required to pay an additional System Development Charge. However, if the developer wanted to increase the number of units in the development, a Charge equal to the difference between the original charge paid and the charge for the larger development (which reflects the net increase in the number of units to be constructed) would be required.

(5) Request for Refund

(a) In order to obtain a refund of payments made, the payor must submit a written request to the System Development Charge Administrator within the time period designated in subsections (1) or (2). The written request must contain the following information:

(i) A copy of the dated receipt issued for payment of the System-Development Charge; and

(ii) Any other proof of entitlement to the refund of Charges as may be required by the System Development Charge Administrator.

(b) Within thirty (30) days after the date of receipt of the written request, the System Development Charge Administrator shall review the written request and determine if it is complete. If the Administrator determines that the written request is not complete, a written statement specifying the deficiencies shall be sent to the payor by certified mail. Unless the deficiencies are corrected within seven (7) days, the System Development Charge Administrator shall take no further action on the written request.

(c) When the System Development Charge Administrator determines that the written request is complete, it shall be reviewed within one (1) month. The Administrator shall approve the refund request if it is determined that the requirements of either subsection (1) or (2) have been met. The refund shall include the Charge paid, but shall not

include interest, unless otherwise provided for in this Ordinance.

Section 164.40 Appeals

(A) An aggrieved party may appeal the determination of any official of the Louisville Metro Government with regard to the administration of this Ordinance by submitting an appeal in writing, and requesting a hearing before the Louisville Metro Code Enforcement Board. The request shall include a written explanation of why the aggrieved party feels that a determination was in error.

(B) The Louisville Metro Code Enforcement Board ("Board") shall hold a hearing in accordance with Section 32.275, *et seq.*

(1) The Board shall be required to set forth specific and detailed written findings of fact with respect to each controverted issue on appeal, as a part of its final order.

(2) In an appeal of the imposition of a System Development Charge, the Board shall not waive the Charge, although it shall be authorized to reduce the Charge:

(a) in order to promote the public health, welfare or safety or to encourage the economic development of Louisville Metro; or

(b) upon a finding that the Charges were improperly calculated; or

(c) upon a finding that the unusual circumstances of the development demonstrate that application of the Charge to the development would be unfair or unjust.

The determination of the Louisville Metro Code Enforcement Board shall be final.

Section 164.50 Sunset provision.

(A) This Ordinance shall remain in effect for a period of ten (10) years from the effective date, at which time, it shall “sunset,” and its provisions expire.

(B) If any bonds that are issued in connection with the provisions of this Ordinance have not been paid in full by the expiration date of this Ordinance, the sunset provision of (A) shall not take effect until such time as the bond debt has been fully retired.

(C) Upon Council legislative re-enactment, the provisions of this Ordinance may be continued after their expiration date as set forth herein.

Section 164.98 Severability

If any section, subsection, sentence or clause of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, then such portion shall be deemed a separate, distinct and independent provisions and such holding shall not affect the validity of the remaining portions of this chapter.

SECTION II. This Ordinance shall take effect upon its passage and approval.

Kathleen J. Herron
Metro Council Clerk

Dr. Barbara E. Shanklin
President of the Council

Jerry E. Abramson
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

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RESOLUTION NO. _____, SERIES 2005

A RESOLUTION URGING THE KENTUCKY PUBLIC SERVICE COMMISSION TO RE-EVALUATE LOUISVILLE GAS AND ELECTRIC COMPANY'S (LG&E) REQUEST FOR A NATURAL GAS RATE INCREASE, AND DECLARING THE ENACTMENT OF THIS RESOLUTION AN EMERGENCY.

Sponsored By: Council Members Dan Johnson, Cheri Bryant Hamilton, Leonard Watkins, Barbara Shanklin, Mary Woolridge, David Tandy, George Unseld, Tom Owen, Tina Ward-Pugh, Jim King, Rick Blackwell, Ron Weston, Bob Henderson, George Melton, and Madonna Flood

WHEREAS, LG&E has been granted permission by the Kentucky Public Service Commission to increase natural gas rates by 64 percent; and

WHEREAS, these rates are now the highest of the major natural gas providers in the state of Kentucky, and exceed the increases allowed to other Kentucky utilities by as much as 30 percent; and

WHEREAS, as an example of the effect of this increase, a typical residential customer with average usage of 8000 cubic feet per month (mcf) will pay \$143.96 for monthly energy costs, effective November 1, 2005, compared with a cost of \$87.85 per month, based on the rates for the same quarter one year ago; and

WHEREAS, Indiana Utilities which is based in Corydon, Indiana and located less than 30 miles from Louisville, was granted only a 20 percent rate increase by the Indiana Utilities Regulatory Commission; and

WHEREAS, Indiana Utilities' average price for 1000 cubic feet (mcf) of natural gas after this 20 percent adjustment has increased to only \$13.55 per mcf; and

WHEREAS, LG&E's average price for 1000 cubic feet (mcf) of natural gas after its 64 percent adjustment has increased to \$15.41 per mcf; and

WHEREAS, Louisville Metro and Southern Indiana, which is located directly across the Ohio River and part of the Louisville metropolitan area, now have divergent energy costs; and

WHEREAS, having the highest natural gas rates in the region could hamper economic development efforts to attract new businesses and jobs to this community; and

WHEREAS, the increases approved for most utilities across the country do not approach the 64 percent approved for LG&E; and

WHEREAS, that LG&E will return any overcharge to customers in a future year through natural gas-price discounts may be of limited value to people who suffer a decrease in their present day quality of life due to an unjustified excessive rate increase; and

WHEREAS, that LG&E will return any overcharge to customers in a future year through natural gas-price discounts will be of no value to people who lose their homes, businesses, or lives due to an unjustified excessive rate increase; and

WHEREAS, if the rate increase is determined to be caused, in part, by unwise decision-making on the part of LG&E in the purchase of natural gas and natural gas futures, then the customers of LG&E should not solely bear the burden of excessive increases, but rather that burden should be shared by the company and its stockholders.

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The Kentucky Public Service Commission is urged to re-evaluate its approval of LG&E's rate increase request, based upon the lower price structure of other Kentucky and Indiana utilities, as well as the record of much smaller increases approved by other regulatory agencies across the country.

SECTION II: A copy of this resolution shall be forwarded to the Kentucky Public Service Commission and the Kentucky Attorney General.

SECTION III: In recognition of the compelling need to assist with the impending home heating crisis and pursuant to Section 7.12 of the Rules of the Council, the enactment of this Resolution is deemed an emergency.

SECTION IV: This Resolution shall take effect upon its passage and approval.

Kathleen J. Herron
Metro Council Clerk

Dr. Barbara E. Shanklin
President of the Council

Jerry E. Abramson
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

RESOLUTION No. ____ SERIES 2005

**A RESOLUTION RENAMING THE SOUTH LOUISVILLE
GOVERNMENT CENTER BUILDING IN HONOR OF
WILLIAM H. "BILL" WILSON.**

Sponsored By: Council Members Julie Raque Adams, Stuart Benson, Ellen Call, Kelly Downard, Robin Engel, Ken Fleming, Cheri Bryant Hamilton, Doug Hawkins, Hal Heiner, Bob Henderson, Dan Johnson, Jim King, Kevin Kramer, George Melton, James Peden, Barbara Shanklin, Glen Stuckel, David Tandy, Leonard Watkins, and Mary Woolridge

WHEREAS, William H. "Bill" Wilson dedicated his life as public servant and political leader in the Louisville Community; and

WHEREAS, working in the private sector, Bill Wilson distinguished himself as creative director of an advertising and public relations firm; and

WHEREAS, during Bill Wilson's tenure, the agency received the prestigious American Federation of Advertising "ADDY Award"; and

WHEREAS, Bill Wilson was called to public service as 9th Ward Alderman for fourteen years from 1982 to 1996; and

WHEREAS, as Alderman, Bill Wilson served the 9th Ward with dedication and compassion exemplified by his work on various neighborhood improvements in the Park DuValle area, creation of the neighborhood paint program and prescription drug program for the needy; and

WHEREAS, Bill Wilson served as Chair of the Louisville Board of Aldermen Appropriations Committee; and

WHEREAS, while serving as an Alderman, he further distinguished himself by serving as President of the Board of Aldermen for three consecutive terms; and

WHEREAS, though on March 18, 2003 Bill Wilson's life was completed, his memory and spirit lives on through the many lives he touched, including loving wife Sandy; daughters, Michelle, Melanie, Yvette, Toni and Lisa; eight grandchildren; one aunt; and a host of other relatives and friends.

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

Section I: In order to honor the memory of the former President of the Board of Alderman for the City of Louisville, the South Louisville Government Center Building at 2911 Taylor Blvd., Louisville, KY, is hereby named the "William H. 'Bill' Wilson South Louisville Government Center Building."

Section II: Henceforward, all signage and other written references produced by and for this building shall state this full name, or any abbreviation thereof, or may be shortened for convenience to the "Wilson Building."

Section III: This Resolution shall take effect upon its passage and approval.

Kathleen J. Herron
Metro Council Clerk

Dr. Barbara E. Shanklin
President of the Council

Jerry E. Abramson
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

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